REMARKS

Previously, Applicant received a Final Office Action dated September 20, 2007 ("*Office Action*"). At the time of the *Office Action*, Claims 1-20 were pending, of which, the Examiner rejected Claims 1-20 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,684,945 to Chen et al. (*Chen*). Applicant respectfully traverses these rejections.

Applicant contends that the rejections of Claims 1-20 contain clear legal and factual deficiencies as described below. Accordingly, Applicant requests a finding that Claims 1-20 are allowable.

35 U.S.C. § 102(b) states, "[a] person shall be entitled to a patent unless . . . the invention was patented or described in a printed publication . . . more than one year prior to the date of application . . . ." In particular, rejection is proper under § 102(b) only if, "each and every element as set forth in the claim is found . . . in a single prior art reference . . . [and] . . . the elements must be arranged as required by the claim." See M.P.E.P. § 2131. This then defines the scope and content of the prior art that is available to the Examiner under § 102(b). However, in the *Office Action*, the Examiner overstepped these bounds by supporting the rejections of Claims 1-20 with material that does not establish the occurrence of a § 102(b) activity. In particular, despite the requirements of § 102(b) that "each and every element" must be set forth in the reference "arranged as required by the claims," the Examiner continues to apply *Chen* as an anticipatory reference to Claims 1-20 even though *Chen* does not disclose "each and every element" of the claims, much less that the allegedly disclosed elements are "arranged as required by the claims." Consequently, Applicant respectfully contends that Examiner has not shown that *Chen* qualifies as a § 102(b) reference and thus cannot support the present rejections of Claims 1-20 as explained below.

Claim 1 is directed to a method of identifying problems in applications. According to the method, the system resource usage of one or more running applications is monitored at a kernel level without modifying run-time environments of the running applications and an application whose system usage pattern satisfies a predetermined criteria associated with one or more problems is identified from the monitored system usage. In addition to Claim 1, Claims 14, 15, 17, and 19 each include limitations generally directed to identifying from the

monitored system usage, an application whose system usage pattern satisfies a predetermined criteria associated with one or more problems. *Chen* does not disclose each of these limitations arranged as required by the claims.

For example, Claim 1 discloses "identifying from the monitored system usage, an application whose system usage pattern satisfies a predetermined criteria associated with one or more problems." The Examiner contends that *Chen* discloses these limitations and supports his rejection of Claim 1 by pointing to sections of *Chen* which recite, "[t]he host name and process ID are replaced with an asterisk (e.g. */Proc/*/ workmen) **to indicate to** the performance tool that the particular hosts and processes are determined when the monitor is opened." See *Office Action*, page 3 (citing *Chen*, col. 26 lines 57-63) (emphasis added). Not only does this citation fail to disclose the limitations of "**identifying from** the monitored system usage, an application," but the citation is also taken out of context and mischaracterizes the teachings of *Chen*.

In particular, *Chen* prefaces the cited portion with the statement, "[a]n extension to the concept of a single wildcard notation is to use multiple wildcards to specify all statistics for a class of system objects. This facility permits **users to define** . . . consoles for monitoring classes of system objects . . . ." See *Chen*, col. 26, lines 31-35. Clearly, *Chen* describes the above-cited portion as an example of a "facility [which] permits users to define . . . consoles." This passage of *Chen* contradicts the Examiner's argument as to the meaning of the above-cited portions of *Chen* with respect to Claim 1. This is impermissible. "The examiner may not pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." See *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve Inc.*, 796 F.2d 443, 448, 230 USPQ 416, 419 (Fed. Cir. 1986); see also *In re Wesslau,* 353 F.2d 238, 241, 147 USPQ 391, 393 (CCPA 1965). Consequently, the Examiner's rejection of these limitations as supported by *Chen* is improper.

Additionally, the Examiner contends that the limitations, "identifying from the monitored system usage, an application . . ." are anticipated by a "threshold alarm" as described in *Chen*. See *Office Action*, page 3 (citing *Chen*, col. 16 lines 19-23). In particular

the cited portion of *Chen* recites, "a threshold alarm value to trigger an action." However, the Examiner has again impermissibly cited only those portions of *Chen* that he alleges support his given position while excluding other portions of *Chen* necessary for a full appreciation of the "threshold alarms."

Chen describes a threshold alarm as follows, "[a]n alarm consists of an action part that describes what action to trigger and a condition part that defines the conditions for triggering the alarm." See *Chen*, col. 91 lines 30-33. For example, "if it is desired to be informed whenever the paging space on a host has less than 10 percent free or there is less than 100 pages free paging space, an alarm definition like the following could be used . . . ." *Id.* at col. 92 lines 56-60. Applicant respectfully contends that, "defin[ing] the conditions for triggering an alarm" does not disclose the limitations, "identifying from the monitored system usage an application." By analogy, if the Examiner's reasoning were followed, sounding an alarm when a patient has a fever is the same as identifying a diseased organ from the fever. Clearly this logic does not satisfy the standard for § 102(b) that "each and every element" must be set forth in a single prior art reference "arranged as required by the claim." See M.P.E.P. § 2131.

Additionally, the Examiner concludes that "using the filters/alarm threshold, and the process control routine to receive the process data **allows a user to sort** processes based on a specific category such as system usage, thus 'identifying from the monitored system usage an application.'" See *Office Action*, page 10. Applicant respectfully contends that "[a]llowing a user to sort processes based on a specific category" does not disclose "identifying from the monitored system usage, an application" as required by Claim 1. Simply put, the Examiner has not identified "each and every element" of Claim 1 in *Chen*, "arranged as required by the claim," but rather has pieced together only those parts of *Chen* that will support his rejections without giving regard to other portions of *Chen* which are necessary for a full appreciation of what is taught by *Chen*. This form of argument is impermissible under § 102(b), and consequently, Applicant respectfully requests that the rejections of Claims 1-20 be withdrawn.

Additionally Claim 2 is directed to the method of Claim 1, "wherein the system resource usage comprises one or more processes that the one or more running applications have spawned." The Examiner contends that *Chen* discloses these limitations and points to sections of Chen which recite, "like many other daemons, xmservd will interpret the receipt of the signal SIGHUP (kill-1) as a request to refresh itself. It does this by spawning another copy of itself via inetd and killing itself. When this happens . . . all data consumers must request resynchronizing with the spawned daemon to continue their monitoring." See *Office Action*, page 3 (citing *Chen*, col. 37, lines 55-63) This argument is nonsensical. "[R]esynchronizing with a spawned daemon" does not disclose "[identifying from the monitored system usage an application] . . . wherein system resource usage comprises one or more processes that the one or more running applications have spawned" as required by Claim 2. Applicant surmises that the Examiner simply cited this passage because it used the word, "spawned." To the extent that the Examiner intends to maintain this rejection, Applicant respectfully requests the Examiner to explain how "resynchronizing with a spawned daemon" discloses the limitations of Claim 2.

Claim 12 discloses "identifying from the monitored memory usage, an application." For reasons similar to those described above with respect to Claim 1, Applicant respectfully contends that *Chen* does not disclose these limitations and accordingly cannot be used as a source of prior art under §102(b). Accordingly, Applicant respectfully requests that the rejections of Claim 12 and its dependent claims be withdrawn.

Claim 18 discloses "a data analysis module operable to . . . identify from the abnormal system usage pattern, an application." For reasons similar to those described above with respect to Claim 1, Applicant respectfully contends that *Chen* does not disclose these limitations and accordingly cannot be used as a source of prior art under § 102(b). Accordingly, Applicant respectfully requests that the rejections of Claim 18 be withdrawn.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicant.

No additional fee is believed to be due. However, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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